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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ATARI INTERACTIVE, INC.,

Plaintiff,

v.

REDBUBBLE, INC.,

Defendant.

Case No. 4:18-cv-03451-JST

**JOINT STATEMENT RE: INSTRUCTION ON
COMPILATION**

Date: November 2, 2021
Ctmm: 6 – 2nd Floor
Judge: Honorable Jon S. Tigar

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1 The parties have agreed on the following language for insertion as a new special instruction to be
2 inserted after Instruction No. 17.35:

3 For the purposes of statutory damages, all the parts of a compilation or derivative work constitute
4 one work.¹ A “compilation” is a work formed by the collection and assembling of preexisting
5 materials or of data that are selected, coordinated, or arranged in such a way that the resulting
6 work as a whole constitutes an original work of authorship.² The term “compilation” includes a
7 work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions,
8 constituting separate and independent works in themselves, are assembled into a collective
9 whole.³ In deciding whether a group of materials should be considered a compilation for
10 purposes of statutory damages, you may consider whether each of the different parts has an
11 independent economic value and is, in itself, viable, which weighs against a finding that the group
12 of materials is a compilation for purposes of statutory damages.⁴ You may also consider whether
13 the group of materials was registered with the Copyright Office together as a single work, which
14 weighs in favor of a finding that the group of materials is a compilation for purposes of statutory
15 damages.⁵

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21 ¹ 17 U.S.C. § 504(c)(1) (“For the purposes of this subsection, all the parts of a compilation or derivative
work constitute one work.”).

22 ² 17 U.S.C. § 101, definition of “compilation” (“A ‘compilation’ is a work formed by the collection and
23 assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way
that the resulting work as a whole constitutes an original work of authorship.”).

24 ³ 17 U.S.C. § 101, definition of “compilation” (“The term ‘compilation’ includes collective works.”); 17
25 U.S.C. § 101, definition of “collective work” (“A ‘collective work’ is a work, such as a periodical issue,
anthology, or encyclopedia, in which a number of contributions, constituting separate and independent
works in themselves, are assembled into a collective whole.”).

26 ⁴ *Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186, 1193 (9th
27 Cir. 2001) (considering “whether each episode ‘has an independent economic value and is, in itself,
viable.’”).

28 ⁵ *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 748 (9th Cir. 2019) (“Though the registration label is not
controlling, it may be considered by the court when assessing whether a work is a compilation.”).

1 Dated: November 2, 2021

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP

2
3 By: /s/ Matthew L. Venezia
Matthew L. Venezia

4 Attorney for Plaintiff
5 ATARI INTERACTIVE, INC.

6
7 Dated: November 2, 2021

DURIE TANGRI LLP

8
9 By: /s/ Joseph C. Gratz
JOSEPH C. GRATZ

10
11 Attorney for Defendant
12 REDBUBBLE, INC.

13 **FILER'S ATTESTATION**

14 Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Joseph C. Gratz, attest that concurrence
15 in the filing of this document has been obtained.

16 Dated: November 2, 2021

/s/ Joseph C. Gratz
JOSEPH C. GRATZ

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2021 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Joseph C. Gratz

JOSEPH C. GRATZ